

POST MARCH 12-27, 2018 15-DAY RENOTICE  
ADDENDUM TO THE INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

**Section 87101(p)(4) through (p)(9) Renumbered from Section 87101(p)(3) through (p)(7)**

**Specific Purpose/Factual Basis:**

Sections 87101(p)(3) through (p)(7) are renumbered to Sections 87101(p)(4) through (p)(9) due to adopting a definition for "privately operated facility" in Section 87101(p)(5).

It is also necessary to renumber these items to correct a numbering error in the proposed regulations. This renumbering reflects that the existing definition for "preadmission fee" in Section 87101(p)(3) should appear before the adopted definition for "pressure injury," renumbered to 87101(p)(4). Existing definitions and the adopted definition for "publicly operated facility" are renumbered accordingly.

**Section 87101(p)(5)**

**Specific Purpose:**

This section *adds* a definition for the term "privately operated facility" to the regulations to provide clarity to assist a licensee in understanding what a privately operated facility is as well as how such a facility differs from a publicly operated facility.

### **Factual Basis:**

**This section adds a definition for "privately operated facility" and is necessary to comply with the requirement that statutory personal rights apply only to privately operated facilities as specified in Health and Safety Code section 1569.265(b), enacted by AB 2171 (Chapter 702, Statutes of 2014). California Department of Social Services (CDSS) also provides this definition in response to testimony by the California Advocates for Nursing Home Reform (CANHR), comment 1, that the definition for "privately operated facility" is not self-evident. The definition is necessary for clarity, to distinguish between "privately operated facility" and "publicly operated facility." CDSS bases the definition for "privately operated facility" on the definitions for "applicant" in Section 87101(a)(9) and "licensee" in Section 87101(l)(3).**

**An "applicant" is defined in Section 87101(a)(9) as including "...any individual, firm, partnership, association, corporation...that has made application for a residential care facility for the elderly license...." A "licensee" is defined in Section 87101(l)(3) as including "...the individual, firm, partnership, corporation, association...having the authority and responsibility for the operation of a licensed facility." Both definitions refer to non-government entities that would apply to be licensed, or be licensed, to operate a residential care facility for the elderly that would be privately operated.**

### **Section 87101(p)(7)**

#### **Specific Purpose:**

This section adds a definition for the term "publicly operated facility" to the regulations.

### **Factual Basis:**

This section adds a definition for "publicly operated facility" and is necessary to provide clarity to assist a licensee in understanding what a publicly operated facility is as well as how such a facility differs from a privately operated facility. The definition for "publicly operated facility" is consistent with the definition for "applicant" in Section 87101(a)(9) and "licensee" in Section 87101(l)(3).

An "applicant" is defined in Section 87101(a)(9) as including a "...county, city, public agency or other government entity that has made application for a residential care facility for the elderly license...." A "licensee" is defined in Section 87101(l)(3) as including a "...county having the authority and responsibility for the operation of a licensed facility." Both definitions refer to government entities that would apply to

be licensed, or be licensed, to operate a residential care facility for the elderly that would be publicly operated.

The term "privately operated facility" is not defined since it is self-evident from the exclusion of an individual, firm, partnership, association, or corporation from the definition of publicly operated facility that all other facilities would be privately operated.

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is renumbering the proposed definition for "publicly operated facility" in Section 87101(p)(7) to Section 87101(p)(9).**

**CDSS is also adding the phrase "city, county, or other" to the definition in response to testimony by CANHR, comment 1, that additional explanation is necessary to provide clarity as to what a publicly operated facility is as well as how it differs from a privately operated facility. The words "city," "county," and "other" are used to describe public entities that may be an applicant or licensee in the definitions for "applicant" in Section 87101(a)(9) and "licensee" in Section 87101(l)(3).**

**Section 87468(a)**

**Specific Purpose:**

This section is amended to 1) replace "Each resident" with "Residents in residential care facilities for the elderly" and 2) replace "the following:" with "those listed below."

**Factual Basis:**

This regulatory change is necessary to clarify that personal rights are provided to all residents in Residential Care Facilities for the Elderly (RCFEs) as specified in Section 87468.

**Modification:**

**Following the August 30, 2017 public hearing, CDSS is making a change to this section for clarity purposes.**

**CDSS is deleting the pre-hearing word "below" and adding the phrase, "...in Sections 87468.1 or 87468.2, as applicable to the facility, and those listed in Section 87468.3." post-hearing to specify where resident rights are listed in regulations.**

**Section 87468 is maintained post-hearing as a lead section to address general requirements in regard to personal rights of residents in all RCFEs.**

**The list of personal rights in Section 87468 is removed and relocated to a new post-hearing Section 87468.1 to address personal rights for residents in publicly operated RCFEs. A list of personal rights for residents in privately operated RCFEs, based on personal rights in Health and Safety Code section 1569.269, added by Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014), is added in a new post-hearing Section 87468.2.**

**A list of personal rights for residents in all RCFEs, based on personal rights in Health and Safety Code sections 1439.51 and applicable to RCFEs as specified in Health and Safety Code section 1569.318, added by SB 219 (Chapter 483, Statutes of 2017), is added in a new post-hearing Section 87468.3.**

**Second Modification:**

**Following the March 27, 2018 public hearing, CDSS is making changes to this section for clarity purposes.**

**CDSS is making technical changes to add references to the titles of sections. There is also a grammatical change to replace "or" with "and" to specify that, depending on whether a facility is privately or publicly operated, Sections 87468.1 and 87468.2 may apply.**

**Section 87468(a)(1)**

**Specific Purpose:**

**This section is adopted to add "Residents in all facilities shall have the following rights."**

**Factual Basis:**

**This regulatory change is necessary to clarify that residents in all facilities continue to be afforded the personal rights in existing regulations. Addition of regulation is necessary to comply with Health and Safety Code sections 1569.265 and 1569.267, added by AB 2171 (Chapter 702, Statutes of 2014). These statutes establish personal rights for residents in privately operated RCFEs and specifies that these rights are to be honored in addition to those addressed by existing regulations. These changes to statute do not change the requirement that personal rights in existing regulations continue to apply to residents in publicly operated RCFEs.**

The remainder of these regulations comprise existing personal rights in Section 87468 that have applied, and will continue to apply as amended, to both privately operated and publicly operated RCFEs.

**Modification:**

Following the August 30, 2017 public hearing, CDSS is making changes to this section for clarity purposes.

CDSS is removing the pre-hearing subsection (a)(1) and sentence "Residents in all facilities shall have the following rights." A list of personal rights for residents in publicly operated RCFEs, based on personal rights in the existing Section 87468, has been moved to and is now located in a new post-hearing Section 87468.1.

**Second Modification:**

Following the March 27, 2018 public hearing, CDSS is adding a new Section 87468(a)(1), to *add* a definition for the term "privately operated facility" to the regulations in response to testimony by CANHR, comment 6, that additional explanation is necessary to provide clarity in understanding what a "privately operated facility" is and how it differs from a "publicly operated facility." The definition is consistent with the proposed definition for "privately operated facility" in Section 87101(p)(5).

**Section 87468(a)(2)**

**Specific Purpose:**

This section *adds* a definition for the term "publicly operated facility" to the regulations to provide clarity to assist a licensee in understanding what a publicly operated facility is as well as how such a facility differs from a privately operated facility.

**Factual Basis:**

This section adds a definition for "publicly operated facility" in response to testimony by CANHR, comment 4, that additional explanation is necessary to provide clarity in understanding what a "publicly operated facility" is and how it differs from a "privately operated facility." The definition is consistent with the proposed definition for "publicly operated facility" in Section 87101(p)(9).

## Sections 87468(b)(1) and (b)(1)(A)

### Specific Purpose:

These sections are adopted to indicate the items that a resident and their representative must be advised, and given a copy, of at the time the admission agreement is signed. They are also adopted to require the licensee to have a resident and their representative sign a copy of the personal rights and include the signed copy in a resident's record.

### Factual Basis:

It is necessary to adopt these sections to require that a resident and their representative be advised, and given a copy, of personal rights.

(b)(1) It is necessary to specify that the required personal rights are in separate sections for consistency with regulations and to comply with statute. The personal rights specified in a new post-hearing Section 87468.1 are based on those in the existing Section 87468 and apply to residents in publicly operated RCFEs. Those specified in a new post-hearing Section 87468.2 are based on personal rights in Health and Safety Code section 1569.269, added to statute by AB 2171 (Chapter 702, Statutes of 2014) and apply to residents in privately operated RCFEs. The personal rights specified in a new post-hearing Section 87468.3 are based on those in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017) and apply to residents in all facilities.

(b)(1)(A) The requirement that a licensee have a resident and their representative sign a copy of the personal rights, and include the signed copy in the resident's record is necessary for consistency with regulations and to comply with statute. The existing Section 87468, which applies to residents in all RCFEs, requires a signed copy of the personal rights. Health and Safety Code section 1569.267(a), which applies to residents in privately operated RCFEs, requires a dated, as well as signed, copy of the personal rights.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to apply this requirement to the personal rights in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017). Although the requirement does not appear in that statute, CDSS is extending the requirement to those rights for consistency in applying personal rights.

CDSS is also using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to require that the personal rights be signed and permit the rights to also be dated at licensee discretion.

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is making changes to Section 87468(b)(1) for clarity purposes.**

**CDSS is making technical changes to add references to the titles of sections. There is also a grammatical change to replace "or" with "and" to specify that, depending on whether a facility is privately or publicly operated, Sections 87468.1 and 87468.2 may apply.**

Sections 87468(c) through (c)(2) Renumbered from Sections 87468(c) through (c)(3)

**Specific Purpose:**

These sections are amended to *remove* regulation in the existing Sections 87468(c) and (c)(1) through (c)(2) that requires facilities "licensed for seven (7) or more" to post complaint information and personal rights "or, in lieu of a posted copy of personal rights, instructions on how to obtain additional copies of these rights."

They are also amended to *add* regulations in new Section 87468(c) to require licensees of all RCFEs to post "personal rights and complaint information" in areas accessible to "residents' representatives, and the public" as well as residents and to *add* regulations in Sections 87468(c)(1) through (c)(3) to require accessible, consistent, and universal posting of resident personal rights and complaint information in all RCFEs.

**Factual Basis:**

Amendment of the regulation to remove reference to facilities licensed for seven (7) or more residents is necessary to clarify that, regardless of the number of residents in a RCFE and whether a RCFE is privately operated or publicly operated, personal rights and complaint information must be posted in all RCFEs.

- (c) To comply with statute, the requirement that licensees post personal rights based on the number of residents in a RCFE will no longer apply to privately operated RCFEs. Health and Safety Code sections 1569.267(a) and (b), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs, regardless of the number of residents in their facilities, to post information about resident personal rights. Given the requirement that licensees of privately operated RCFEs post personal rights,

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to also require that licensees of publicly operated RCFEs post personal rights. It also is necessary to remove existing regulation permitting licensees to either post personal rights or instructions on how to obtain additional copies of these rights in lieu of a posted copy for consistency with these requirements.

CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that personal rights and complaint information also be accessible to residents, their representatives, and the public for consistency with existing regulations. Section 87101 defines "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles act on behalf of residents and need transparent access to personal rights and complaint information to support residents in regard to these rights when necessary. The public needs transparent access to personal rights and complaint information as they research RCFEs for friends or family or support friends or family in RCFEs.

- (c)(1) The requirement that licensees post procedures for filing confidential complaints is being superseded as necessary to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). This statute required CDSS to design a poster or cause a poster to be designed that contains information on how to report complaints. CDSS has made the poster available and requires that it, or a poster that is consistent with the content of the poster provided by CDSS, be posted in all RCFEs.
- (c)(1)(A) CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that personal rights and complaint information also be accessible to residents' responsible persons or conservators and the public for consistency with existing regulations. Section 87101 defines "responsible person" as an "...individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being" and "conservator" as "...a person appointed by the Superior Court pursuant to Probate Code section 1800 et. seq. or Welfare and Institutions Code section 5350, to care for the person, or estate, or person and estate, of an adult." People in these roles act on behalf of residents and need transparent access to personal rights and complaint information to support residents in regard to these rights when necessary. The public needs transparent access to personal rights and



complaint information as they research RCFEs for friends or family or support friends or family in RCFEs.

- (c)(1)(B) The requirement that licensees of all RCFEs post resident personal rights as specified in Sections 87468(a)(1)(A) through (a)(1)(R), which are based on existing regulations, is necessary for consistency. The requirement that licensees of privately operated RCFEs post resident personal rights as specified in regulations is necessary to comply with Health and Safety Code section 1569.267(a), added to statute by AB 2171 (Chapter 702, Statutes of 2014), which requires these licensees to inform residents of personal rights in the California Code of Regulations (CCR), Title 22, Division 6, RCFE section 87468, Personal Rights as well as new statutory personal rights. CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to continue requiring that licensees of publicly operated RCFEs post resident personal rights as specified in regulations in this Phase I regulations package. These regulations will be followed by more extensive changes to resident personal rights for both privately operated and publicly operated RCFEs in a forthcoming "Phase II" regulations package.
- (c)(2) The requirement that licensees of privately operated RCFEs also post resident personal rights as specified in Health and Safety Code section 1569.269, which lists new statutory personal rights, is necessary to comply with statute. Health and Safety Code section 1569.265(b), added to statute by AB 2171 (Chapter 702, Statutes of 2014) specifies that personal rights in statute apply only to privately operated RCFEs. Health and Safety Code section 1569.267(a), also added to statute by AB 2171, requires licensees of privately operated RCFEs to inform residents of new statutory personal rights as well as personal rights in the CCR, Title 22, Division 6, RCFE section 87468, Personal Rights.
- (c)(2)(A) The requirement that licensees of all RCFEs post information on the appropriate reporting agency in case of a complaint or emergency by using a complaint information poster is necessary to comply with statute. A complaint poster is being made available to licensees by CDSS and must be posted in the main entryway of a RCFE to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). The Licensing Complaint Poster (PUB 475, 1/15) is incorporated in its entirety, by reference, in the proposed regulations. Although it is unduly cumbersome, expensive, and otherwise impractical to publish this poster in the California Code of Regulations, it can be found on CDSS Community Care Licensing Division website at [www.cclcd.ca.gov](http://www.cclcd.ca.gov). CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to permit licensees to develop their own complaint poster that is consistent with information on the complaint poster being made available by CDSS. This requirement is also necessary for clarity and

consistency, to require that all RCFEs, regardless of whether they are privately operated or publicly operated, have universal posting of complaint information.

- (c)(3) The requirement that licensees of all RCFEs post resident personal rights and complaint information in English and other languages as specified is necessary for clarity and consistency. Health and Safety Code section 1569.267(c), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs to post personal rights both in English and in any other language in facilities where five percent or more of residents can only read in that language. CDSS is using its broad authority to promulgate regulations for RCFEs granted by Health and Safety Code section 1569.30 to extend these requirements to posting both personal rights and complaint information in English and other languages in all RCFEs. These extended requirements are necessary to provide licensees with a clear, measurable and consistent standard for posting this essential information in languages that can be read by residents. They are also necessary to ensure that residents have equal access to and awareness of this essential information.

These regulations meet the "clarity," "consistency" and "reference" standards of the Administrative Procedures Act (APA), Section 11349 of the Government Code, subsections (c), (d), and (e). It also meets the requirements of style pursuant to Section 11343.1 of the Government Code, and the principles of "plain English" rule drafting.

**Modification:**

**Following the July 27, 2016 public hearing, CDSS is making the following changes:**

- (c) This section is being further amended to specifically include "residents, their representatives, and the public" by placing a comma after "residents" and replacing the group "relatives, responsible persons, or conservators," with the broader term "representatives."**

**The pre-hearing proposed Sections 87468(c)(1), (c)(1)(A) and (B) are deleted. The pre-hearing proposed Sections 87468(c)(2) and (c)(3) are renumbered to Sections 87468(c)(1) and (c)(2) post-hearing to accommodate deletion of the pre-hearing proposed Section 87468(c)(1). Amendment of these sections is necessary post-hearing to delete the proposed Section 87468(c)(1) and subsections (c)(1)(A) through (c)(1)(B) to make the requirement to post personal rights generic in Section 87468(c) for clarity. All licensees are required to post these rights. It is self-evident that licensees of all facilities will need to post the rights specified in Section 87468(a)(1) and licensees of**

privately operated RCFEs will need to post the rights in both Sections 87468(a)(1) and (a)(2).

- (c)(1) The requirement that licensees of all RCFEs post information on the appropriate reporting agency in case of a complaint or emergency by using a complaint information poster, described in subsection (c)(1)(A), is necessary to comply with statute. A complaint poster is being made available to licensees by CDSS and must be posted in the main entryway of a RCFE to comply with Health and Safety Code section 1569.33, amended in statute by SB 895 (Chapter 704, Statutes of 2014). The Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475, 1/15) is incorporated in its entirety, by reference, in the proposed regulations. Although it is unduly cumbersome, expensive, and otherwise impractical to publish this poster in the California Code of Regulations, it can be found on CDSS Community Care Licensing Division website at [www.cclid.ca.gov](http://www.cclid.ca.gov). CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to permit licensees to develop their own complaint poster that is consistent with information on the complaint poster being made available by CDSS. This requirement is also necessary for clarity and consistency, to require that all RCFEs, regardless of whether they are privately operated or publicly operated, have universal posting of complaint information.
- (c)(1)(A) This section was renumbered from pre-hearing proposed section (c)(2)(A) and the title to PUB 475 was corrected to Residential Care Facility for the Elderly (RCFE) Complaint Poster, removing the word "Licensing."
- (c)(2) The requirement that licensees of all RCFEs post resident personal rights and complaint information in English and other languages as specified is necessary for clarity and consistency. Health and Safety Code section 1569.267(c), added to statute by AB 2171 (Chapter 702, Statutes of 2014) requires licensees of privately operated RCFEs to post personal rights both in English and in any other language in facilities where five (5) percent or more of residents can only read in that other language. CDSS is using its broad authority to promulgate regulations for RCFEs granted by Health and Safety Code section 1569.30 to extend these requirements to posting both personal rights and complaint information in English and other languages in all RCFEs. These extended requirements are necessary to provide licensees with a clear, measurable and consistent standard for posting this essential information in languages that can be read by residents. They are also necessary to ensure that residents who

read in other languages have equal access to and awareness of personal rights and complaint information.

**Second Modification:**

Following the August 30, 2017 public hearing, CDSS is making the following changes:

- (c) This section is being further amended to specifically include "personal rights, nondiscrimination notice, and complaint information." This amendment is made by placing a comma after the group "Licensees shall prominently post personal rights, adding "nondiscrimination policy," and placing a comma before the group "and complaint information in areas accessible to residents, their representatives, and the public."
- (c)(1) It is necessary to specify that the personal rights required to be posted are in separate sections for consistency with regulations and to comply with statute. The personal rights specified in a new post hearing Section 87468.1 are based on those in the existing Section 87468 and must be posted in publicly operated RCFEs. Those specified in a new post-hearing Section 87468.2 are based on personal rights in Health and Safety Code section 1569.269, added to statute by AB 2171 (Chapter 702, Statutes of 2014) and must be posted in privately operated RCFEs. The personal rights specified in a new post-hearing Section 87468.3 are based on those in Health and Safety Code section 1439.51, which applies to RCFEs as specified in Health and Safety Code section 1569.318, added to statute by SB 219 (Chapter 483, Statutes of 2017) and must be posted in all facilities.

The pre-hearing proposed Section 87468(c)(1) is renumbered to Section 87468(c)(2) post-hearing to accommodate addition of the new Section 87468(c)(1) post-hearing. The pre-hearing proposed Section 87468(c)(2) is deleted and relocated to a new Section 87468(d).

**Third Modification:**

Following the March 27, 2018 public hearing, CDSS is making the following changes:

- (c)(1) This section is being further amended to make technical changes to add references to the titles of sections. There is also a grammatical change to replace "or" with "and" to specify that, depending on whether a facility is privately or publicly operated, Sections 87468.1 and 87468.2 may apply.

In addition, the word "all" is replaced with the phrase "publicly and privately operated" to specify that the requirement to post the personal rights of residents who are lesbian, gay, bisexual, and transgender applies to both publicly and privately operated facilities.

(c)(2)(A) This section is being further amended to replace the word "shall" with the word "may." This modification is necessary to clarify that while a licensee is required to post specified complaint information, as indicated by use of the word "shall" in Section 87468(c)(2), a licensee may opt to use a courtesy poster, the Residential Care Facility for the Elderly (RCFE) Complaint Poster (PUB 475), provided by CDSS or develop their own poster that meets specified requirements. This modification is consistent with CDSS Implementation Plan for Senate Bill (SB) 895 (Chapter 704, Statutes of 2014), which can be found on CDSS Community Care Licensing Division website at <http://cclcd.ca.gov/res/pdf/16APX-06.pdf>, and specifies that a licensee "...may display alternate posters...as long as the content of the poster is consistent with the PUB 475."

#### Title Section 87468.1

##### Specific Purpose/Factual Basis:

The section title is amended to add the phrase "privately and" to the title. CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to maintain existing personal rights from Section 87468 that have applied, and will continue to apply, to residents in both privately and publicly operated RCFEs. Maintaining existing personal rights for residents in privately operated RCFEs is also consistent with the requirement that those residents be advised of personal rights in statute and "in Section 87468 of Title 22 of the California Code of Regulations" as specified in Health and Safety Code 1569.267(a), enacted by Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014).

#### Section 87468.1(a) through (a)(18) and Handbook Section 87468.1(a)(10)

##### Specific Purpose:

These sections are adopted to *add* regulation to specify that "Residents in publicly operated residential care facilities for the elderly shall have all of the following personal rights." The Handbook is added for ease of reference to Health and Safety Code section 1569.313 mentioned in Subsection (a)(10).

They are also adopted to *add* personal rights for residents in publicly operated RCFEs to regulation.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the existing regulatory personal rights to publicly operated RCFEs.

- (a) CDSS is using its broad authority to promulgate regulations in Health and Safety Code section 1569.30 to subject publicly operated RCFEs to, and ensure all residents in those RCFEs are protected by, the provisions of this section.

- (a)(1) A resident's right to have dignity in their personal relationships is adopted for consistency with the existing right in Section 87468(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "be accorded" with the word "have." This modification is necessary to use a more modern and easily understood word for "accorded" in this right.

CDSS is replacing the phrase "his/her" in the existing right with the word "their" in this right. This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(2) A resident's right to have safe, healthful and comfortable accommodations, furnishings and equipment is adopted for consistency with the existing right in Section 87468(a)(2).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "be accorded" with the word "have." This modification is necessary to use a more modern and easily understood word for "accorded" in this right.

- (a)(3) A resident's right to be free from punishment, humiliation, intimidation, abuse, or other actions of a punitive nature is adopted for consistency with the existing right in Section 87468(a)(3).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is omitting the phrase "corporal or unusual," the word "mental," and the word "patterns" from this right. The Department is also replacing the phrase "of monetary allowances" in the existing right with the

phrase "residents' money." Any form of punishment, abuse, withholding money a resident is normally entitled to, and interference with normal sleep, including sleeping patterns, eating, and elimination would be contrary to personal rights.

- (a)(4) A resident's right to be informed of provisions of law regarding complaints, procedures for confidentially registering complaints, and how to contact specified agencies regarding grievances in regard to the facility is adopted for consistency with the existing right in Section 87468(a)(4).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "procedures to confidentially register" with the phrase "procedures for confidentially registering." The Department is also replacing the phrase "telephone number of" with the phrase "telephone number for." These modifications are necessary to use more easily understood language in this right.

CDSS is replacing the phrase "licensing agency" in the existing right with the word "Department" in this right. This modification is necessary to refer to "Department," the standard term for referring to CDSS, currently the only licensing agency for RCFEs, in regulations.

CDSS is adding the phrase "and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term care ombudsman regarding grievances in regard to the facility" to this right. This phrase is included in a personal right for residents in privately operated RCFEs in Health and Safety Code section 1569.269(a)(12), enacted by Assembly Bill 2171 (Chapter 702, Statutes of 2014), but it is also appropriate for residents in publicly operated RCFEs to confidentially register complaints with these agencies. CDSS licenses, and the long-term care ombudsman supports, all RCFEs.

CDSS is using the phrase "in regard to the licensee" in this right instead of the phrase "against the licensee" used in Health and Safety Code section 1569.269(a)(12). It is necessary to avoid using language that is unnecessarily adversarial to a licensee.

- (a)(5) A resident's right to have freedom to attend religious services or activities of their choice either in or outside the facility and visits from the spiritual advisor of their choice is adopted for consistency with the existing right in Section 87468(a)(5).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing

personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "freedom of attending" with the phrase "freedom to attend." This modification is necessary to use more easily understood language in this right.

CDSS is replacing the words "his/her" in the existing right with the word "their" in this right. This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is adding the phrase "either in or outside the facility" to the first sentence of this right. The Department is omitting the second sentence of the existing personal right, "Attendance at religious services, either in or outside the facility, shall be on a completely voluntary basis." The concept of choice is already in the first sentence of the right.

- (a)(6) A resident's right to leave or depart the facility at any time and not be locked into any room, building, or on facility premises is adopted for consistency with the existing right in Section 87468(a)(6). The provision specifying the licensee is not prohibited from establishing house rules, such as locking doors to protect residents, or barring windows against intruders, with permission from the Department is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the phrase "prohibit the establishment of" with the phrase "prohibit a licensee from establishing." This modification is necessary to clarify that a licensee is not prohibited from establishing house rules for a RCFE in this right.

CDSS is replacing the phrase "the locking of" in the existing right with the word "locking" in this right. The Department is also replacing the phrase "for the protection of" with the phrase "to protect." In addition, the Department is replacing the phrase "nor does it prohibit...the barring of windows against intruders" with the phrase "or barring windows against intruders." These modifications are necessary to reduce the number of words and use more easily understood language in this right.

CDSS is replacing the phrase "licensing agency" in the existing right with the word "Department" in this right. This modification is necessary to refer to "Department," the standard term for referring to CDSS, currently the only licensing agency for RCFEs, in regulations.



- (a)(7) A resident's right to visit the facility prior to residence with their representatives is adopted for consistency with the existing right in Section 87468(a)(7).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles have a significant role in determining residents' care and services.

- (a)(8) A resident's right to have their representatives regularly informed by the licensee of activities related to care or services is adopted for consistency with the existing right in Section 87468(a)(8).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" and the words "the resident's" with the word "their." The Department is also omitting the word "his" from the phrase "his care or services." These modifications are necessary to use references that are gender-neutral and avoid using references that are gender-specific so that the right is equally applied to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as an individual who has authority to act on behalf of the resident. People in these roles have a significant role in determining residents' care and services.

CDSS is replacing the word "facility" in the existing right with the word "licensee" in this right. A licensee, not a RCFE, which is an inanimate object, can provide information about activities related to care or services.

- (a)(9) A resident's right to have communications to the licensee from their representatives answered promptly and appropriately is adopted for consistency with the existing right in Section 87468(a)(9).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. It replacing the word "facility" with the word "licensee." A licensee, not a RCFE, which is an inanimate object, can have communications with a resident's representatives.

CDSS is replacing the words "his/her" and the words "the resident's" in the existing right with the word "their" in this right. These modifications are necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

CDSS is replacing the phrase "family and responsible persons" in the existing right with the word "representatives" in this right. This modification is necessary for consistency with existing regulations in Section 87101, which define "representative" as an individual who has authority to act on behalf of the resident. People in these roles have a significant role in determining residents' care and services.

- (a)(10) A resident's right to be informed of the licensee's policy concerning visits and other communications with residents, according to Health and Safety Code section 1569.313 and handbook reference are adopted for consistency with statute and the existing right in Section 87468(a)(10). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.313 specifies requirements for providing residents and their representatives with RCFE policy concerning family visits and other communication with residents.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the word "facility's" with the word "licensee's." A licensee, not a RCFE, which is an inanimate object, can have a policy.

CDSS is replacing the phrase "as specified in" in the existing right with the phrase "according to" in this right. This modification is necessary to use more easily understood language.

- (a)(11) A resident's right to have their visitors permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon, is adopted for consistency with the existing right in Section 87468(a)(11).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(12) A resident's right to wear their own clothes, keep and use their own personal possessions, and keep and spend their own money is adopted for consistency with the existing right in Section 87468(a)(12).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. The Department is replacing the words "his/her" with the word "their." This modification is necessary to use a reference that is gender-neutral and applies the right equally to residents in RCFEs regardless of their gender identity.

- (a)(13) A resident's right to have access to individual storage space for private use is adopted for consistency with the existing right in Section 87468(a)(13).
- (a)(14) A resident's right to have reasonable access to telephones for confidential calls is adopted for consistency with the existing right in Section 87468(a)(14). The provision specifying that the licensee may require reimbursement for long distance calls is also adopted for consistency with that right.
- (a)(15) A resident's right to send and receive unopened correspondence in a prompt manner is adopted for consistency with the existing right in Section 87468(a)(15).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to modify text from the existing personal right while maintaining the meaning intended by the right. CDSS

is replacing the word "mail" with the word "send." This modification is necessary to include e-mail as well as traditional postal mail to modernize requirements in regulations.

- (a)(16) A resident's right to receive or reject medical care or other services is adopted for consistency with the existing right in Section 87468(a)(16).
- (a)(17) A resident's right to receive assistance in exercising the right to vote is adopted for consistency with the existing right in Section 87468(a)(17).
- (a)(18) A resident's right to move from the facility is adopted for consistency with the existing right in Section 87468(a)(18).

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is making the following changes:**

- (a) This section is being amended to add the phrase "privately and." CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to maintain existing personal rights from Section 87468 that have applied, and will continue to apply, to residents in both privately and publicly operated RCFEs.**

**Maintaining existing personal rights for residents in privately operated RCFEs is also necessary to comply with the requirement that those residents be advised of personal rights in statute and "in Section 87468 of Title 22 of the California Code of Regulations" as specified in Health and Safety Code 1569.267(a), enacted by AB 2171 (Chapter 702, Statutes of 2014).**

**In addition, CDSS is adding the phrase "privately and" in response to testimony by CANHR, comment 5, that personal rights of residents in privately operated facilities must include all of the rights in Health and Safety Code section 1569.269 and current Section 87468. The personal rights in current Section 87468 are maintained for both publicly and privately operated facilities in the proposed Section 87468.1. The personal rights in Health and Safety Code section 1569.269 are applied to privately operated facilities in the proposed Section 87468.2.**

- (a)(1) This section is being amended to replace the word "have" with the phrase "be accorded" for consistency with language used in the personal right that applies to privately operated facilities in Health and Safety Code section 1569.269, enacted by AB 2171 (Chapter 702, Statutes of 2014).**

- (a)(2) This section is being amended to replace the word "have" with the phrase "be accorded" for consistency with language used in the personal right that applies to privately operated facilities in Health and Safety Code section 1569.269, enacted by AB 2171 (Chapter 702, Statutes of 2014).**

Sections 87468.2(a) through (a)(30) and Handbook Sections 87468.2(a)(9), (a)(12), (a)(13), (a)(14), (a)(25), (a)(27), and (a)(28)

Specific Purpose:

These sections are adopted to *add* regulation to specify that "Residents in privately operated residential care facilities for the elderly shall have all of the following personal rights." The Handbook sections are added for ease of reference to the California Codes mentioned in Subsections (a)(9), (a)(12), (a)(13), (a)(14), (a)(25), (a)(27), and (a)(28).

They are also adopted to *add* the Resident's Bill of Rights for residents in privately operated RCFEs to regulation.

Factual Basis:

Adoption of regulation is necessary for consistency in applying the statutory Resident's Bill of Rights to privately operated RCFEs.

- (a) To comply with statute, privately operated RCFEs are subject to, and all residents in these RCFEs are protected by, the provisions of this section. Health and Safety Code section 1569.265 specifies that "The provisions of this article apply only to privately operated residential care facilities for the elderly."

- (a)(1) A resident's right to have dignity in their personal relationships is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "be accorded" in statute with the word "have" in regulation. This clarification is necessary to use a more modern and easily understood word for "accorded."

- (a)(2) A resident's right to have a reasonable level of personal privacy is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(2).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "be granted" in statute with the word "have" in regulation. This clarification is necessary to use a word that is less authoritative and more respectful of residents in RCFEs.

- (a)(3) A resident's right to have their records and personal information remain confidential and approve their release, except as authorized by law is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(3).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "confidential treatment of their records and personal information" in statute to read "their records and personal information remain confidential" in regulation. This clarification is necessary to clarify what "confidential treatment" means.

- (a)(4) A resident's right to be encouraged and assisted in exercising their rights as citizens and as residents of the facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(4). The requirement that residents be free from interference, coercion, discrimination, and retaliation in exercising their rights is also adopted for consistency with that right.

- (a)(5) A resident's right to have safe, healthful, and comfortable accommodations, furnishings, and equipment is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(5).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "be accorded" in statute with the word "have" in regulation. This clarification is necessary to use a more modern and easily understood word for "accorded."

- (a)(6) A resident's right to care, supervision, and services that meet their individual needs and are delivered by sufficient staff is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(6).
- (a)(7) A resident's right to be served food necessary to meet their nutritional needs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(7).

- (a)(8) A resident's right to make choices concerning their daily lives in the facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(8).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "life" in statute with the word "lives" in regulation. This clarification is necessary to use a word that is plural for consistency with applying personal rights to residents.

- (a)(9) A resident's right to fully participate, and involve persons of their choice, in planning their care, including attending and participating in meetings or communications regarding care and services, according to Health and Safety Code section 1569.80 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(9). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.80 specifies requirements for including a resident in care planning.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "in accordance with" in statute with the phrase "according to" in regulation. This clarification is necessary to use more modern and easily understood words.

CDSS is replacing the phrases "the planning process" and "the process" in statute with the phrases "this planning" and "planning of their care" in regulation. This clarification is necessary to remove the reference to "process," which "planning" includes, and to more clearly reflect that residents are directing planning, to the extent possible.

CDSS is omitting other words, such as "the" before the phrase "care and services," from the right in statute that are not necessary to convey the meaning intended by statute.

- (a)(10) A resident's right to be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and abuse is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(10).
- (a)(11) A resident's right to present grievances and recommend changes to the facility staff, management, and governing authority, and to any other

person without retaliatory actions is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(11). The requirement that the licensee respond to residents' grievances and recommendations promptly is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "the staff of the facility, the facility's management and governing authority" in statute with the phrase "the facility staff, management, and governing authority" in regulation. This clarification is necessary to use fewer words.

CDSS is replacing the sentence "The licensee shall take prompt actions to respond to residents' grievances" in statute with the sentence "The licensee shall respond to residents' grievances and recommendations promptly" in regulation. This clarification is necessary to include the concept of recommendations from residents, which may arise from grievances.

- (a)(12) A resident's right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances in regard to the licensee is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(12). The requirement that the licensee post the telephone numbers and addresses for the local offices of the State Department of Social Services and ombudsman program according to Welfare and Institutions Code section 9718 and handbook reference are also adopted for consistency with that right. Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Welfare and Institutions Code section 9718 specifies requirements for posting the required information.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "against" in statute with the phrase "in regard to" in regulation. This clarification is necessary to avoid using language that is unnecessarily adversarial to a licensee.

CDSS is replacing the phrase "in accordance with" in statute with the phrase "according to" in regulation. This clarification is necessary to use more modern and easily understood words.

CDSS is adding the phrase "and their representatives" to the right. This phrase is necessary for consistency with the roles residents'



representatives may assume in acting on behalf of residents and determining residents' care and services. It is also consistent with the requirement that posted information related to personal rights be accessible to residents' representatives, as specified in Section 87468.

- (a)(13) A resident's right to be fully informed, prior to or at the time of admission, of all rules that govern resident conduct and responsibilities while living at the facility, as evidenced by the resident's written acknowledgement is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(13). The requirement that all rules established by a licensee be reasonable and not violate any rights or other applicable laws or regulations, according to Health and Safety Code section 1569.885 and handbook reference are also adopted for consistency with that right. Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.885 specifies requirements for RCFE rules.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "To be fully informed, as evidenced by the resident's written acknowledgement, prior to or at the time of admission, of all rules" in statute to read "To be fully informed, prior to or at the time of admission, of all rules....as evidenced by the resident's written acknowledgement" in regulation. This clarification is necessary to place the requirement to inform residents before the requirement to have written acknowledgement of the information from residents.

CDSS is replacing the phrase "governing residents' conduct and responsibilities" in statute with the phrase "that govern resident conduct and responsibilities while living at the facility" in regulation. This clarification is necessary to shorten some words in the right and clarify that the rules referred to in the right apply only while residents are living at a RCFE.

CDSS is rephrasing the sentence "In accordance with Section 1569.885, all rules established by a licensee shall be reasonable and shall not violate any rights set forth in this chapter or in other applicable laws and regulations" in statute to read "All rules established by a licensee shall be reasonable and not violate any rights in this section or other applicable laws or regulations, according to Health and Safety Code section 1569.885" in regulation. This clarification is necessary to write regulation in layperson's terms. It is also necessary to refer to this section of regulations rather than statute, place statute at the end of the right, and clarify which code in statute is being referred to.

- (a)(14) A resident's right to receive a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided in the admission agreement, and to receive written notice of any rate increases according to Health and Safety Code sections 1569.655 and 1569.884 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(14). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code sections 1569.655 and 1569.884 specify requirements for fee schedules and rate increases.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided" in statute to read "To receive a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided in the admission agreement" in regulation. This clarification is necessary to place the requirement that residents receive specified information before the requirement that the information be in the admission agreement.

CDSS is replacing the phrase "pursuant to Sections 1569.655 and 1569.884" in statute with the phrase "according to Health and Safety Code sections 1569.655 and 1569.884" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(15) A resident's right to be informed in writing prior to or at the time of admission, of any resident retention limitations set by the state or licensee, including any limitations or restrictions on the licensee's ability to meet residents' needs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(15).
- (a)(16) A resident's right to reasonable accommodation of their individual needs and preferences in all aspects of life in the facility, except when accommodation would endanger the health or safety of the individual resident or other residents is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(16).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding

the word "their" before the phrase "individual needs and preferences" in statute so that the phrase reads "their individual needs and preferences" in regulation. This clarification is necessary to clarify that the right refers to the needs and preferences of residents.

CDSS is removing the phrase "except when the health or safety of the individual or other residents would be endangered" in statute to read "except when accommodation would endanger the health or safety of the individual resident or other residents" in regulation. This clarification is necessary to clarify that an accommodation may endanger health or safety and that "individual" refers to a resident.

- (a)(17) A resident's right to reasonable accommodation of their preferences concerning room and roommate choices is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(17).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "resident" in statute with the word "their" in regulation. This clarification is necessary for consistency with use of the gender-neutral "their" to refer to residents in these personal rights.

- (a)(18) A resident's right to written notice of any room changes at least 30 days in advance unless a room change is agreed to by the resident, required to fill a vacant bed, or necessary due to an emergency is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(18).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "the request for a change" in statute with the phrase "a room change" in regulation. This clarification is necessary to use fewer words and clarify that the requested change would be in regard to moving from one room to another.

- (a)(19) A resident's right to share a room with their spouse, domestic partner, or other resident of their choice when both live in the facility and consent to the arrangement is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(19).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "the resident's" and the word "resident's" in statute with the

word "their" in regulation. This clarification is necessary to use fewer words and for consistency with use of the gender-neutral "their" to refer to residents in these personal rights.

CDSS is removing the word "same" before "facility" in statute to read "the facility" in regulation. This clarification is necessary since the word "same" is not necessary to adequately convey that a resident and another resident wanting to share a room must live in the RCFE.

CDSS is adding the word "both" before the word "consent" in statute so that the phrase reads "both consent" in regulation. This clarification is necessary to indicate that the resident and their spouse, domestic partner, or other resident must agree to share a room.

- (a)(20) A resident's right to select their own physicians, pharmacies, privately paid personal assistants, hospice agency, and health care providers in a manner that is consistent with the resident's admission agreement or other rules of the facility, and according to these personal rights is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(20).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "contract of admission" in statute with the phrase "admission agreement" in regulation. This clarification is necessary for consistency with use of the term "admission agreement" as defined in Section 87101(a)(2) and as referenced in existing regulations. "Admission agreement" is defined as "...all documents that a resident or resident's representative must sign at the time of, or as a condition of, admission."

CDSS is replacing the phrase "in accordance with this act" in statute with the phrase "according to these personal rights" in regulation. This clarification is necessary to write regulation in layperson's terms and refer to this section of regulations rather than statute.

- (a)(21) A resident's right to have prompt access to all of their records and to purchase photocopies of their records is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(21). The requirement that photocopied records be provided within two business days and at a cost that does not exceed the community standard for photocopies is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting

the unnecessary word "review" from the phrase "to review all" in statute to make it clear that a resident has access to all of their records, which includes the resident being permitted to review them.

CDSS is adding the phrase "of their records" to the phrase "purchase photocopies" in statute. It is necessary to clarify that "photocopies" refer to a resident's records.

CDSS is replacing the phrase "promptly provided, not to exceed two (2) business days, at a cost not to" in statute with the phrase "provided within two (2) business days and at a cost that does not" in regulation. The word "promptly" is not needed since the right specifies a required timeframe for providing photocopies. The phrase "to not exceed" can adequately be expressed by the word "within." The phrase "cost that does not" describes acceptable cost in more easily understood words.

- (a)(22) A resident's right to be protected from involuntary transfers, discharges, and evictions is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(22). The requirements that a licensee only involuntarily transfer or evict residents for reasons permitted by state law or regulations and comply with all eviction and relocation protections for residents is also adopted for consistency with that right. In addition, a definition of "involuntary" included in the right is adopted for consistency with the right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "in violation of state laws and regulations" in the first sentence of the right in statute from the first sentence of the right in regulation. The phrase is not necessary since the right provides residents with a broad and general protection from involuntary transfers, discharges, and evictions. Also, state law and regulations are addressed in the second sentence of the right.

CDSS is replacing the word "Facilities" in statute with the phrase "A licensee." A licensee, not a RCFE, which is an inanimate object, can transfer or evict residents.

CDSS is replacing the word "not" and the phrase "grounds other than those specifically enumerated under" in statute with the word "only" and the phrase "reasons permitted by" in regulation. The Department is also replacing the second instance of the word "enumerated" in statute with "all" in regulation. These clarifications are necessary to reduce the number of, and use more easily understood, words to convey the meaning of the right.

(a)(23) A resident's right to move from a facility is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(23).

(a)(24) A resident's right to consent to have their relatives and other individuals of their choosing visit during reasonable hours, privately, and without prior notice is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(24).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the word "their" so there is the phrase "have their relatives" in regulation and replacing "the resident's" in statute with the word "their" in regulation. This clarification is necessary to use fewer words and for consistency with use of "their" to refer to residents in these personal rights.

(a)(25) A resident's right to receive written information on the right to establish an advance health care directive, and according to Health and Safety Code section 1569.156, the licensee's written policies on honoring an advance health care directive and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(25).

Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.156 specifies requirements for providing information to residents about, and honoring, advance health care directives.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the word "advanced" in statute with the word "advance" in regulation. This clarification is necessary for consistency with use of the term "advance health care directive" as defined in Section 87101(a)(5) and as referenced in existing regulations.

CDSS is replacing the phrase "pursuant to Section 1569.156" in statute with the phrase "according to Health and Safety Code section 1569.156" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

CDSS is replacing the phrase "those directives" in statute with the phrase "an advance health care directive" in regulation. This clarification is necessary to refer to the directives by name for ease of understanding.

(a)(26) A resident's right to be encouraged to develop and maintain their fullest potential for independent living through participation in activities designed

and implemented for this purpose, according to Section 87219 is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(26).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is reorganizing the phrase "to maintain and develop" in statute to read "develop and maintain" in regulation. A potential for independent living has to be developed before the potential can be maintained.

CDSS is omitting the phrase "that are" before the word "designed" in statute so the phrase reads "activities designed" in regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

CDSS is replacing the phrase "in accordance with Section 87219 of Title 22 of the California Code of Regulations" in statute with the phrase "according to Section 87219" in regulation. This clarification is necessary to use more modern and easily understood words. Also, reference to Title 22 and the California Code of Regulations is unnecessary to refer to another section of regulations within the regulations.

- (a)(27) A resident's right to organize and participate in a resident council established according to Health and Safety Code section 1569.157 and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(27). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code section 1569.157 specifies requirements for assisting residents in establishing and maintaining a resident council.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "that is" before "established" in statute so the phrase reads "resident council established" in regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

CDSS is replacing the phrase "pursuant to Section 1569.157" in statute with the phrase "according to Health and Safety Code section 1569.157" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(28) A resident's right to protection of their property from theft or loss according to Health and Safety Code sections 156.152, 1569.153, 1569.154,

and handbook reference are adopted for consistency with the right in Health and Safety Code section 1569.269(a)(28). Handbook language is also adopted for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code sections 1569.152, 1569.153, and 1569.154 specify requirements for safeguarding resident property.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "in accordance with Sections 1569.152, 1569.153, and 1569.154" in statute with "according to Health and Safety Code sections 1569.152, 1569.153, and 1569.154" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

- (a)(29) A resident's right to manage their financial affairs is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(29). The requirement that a licensee not require residents to deposit their personal funds with the licensee is also adopted for consistency with the right.
- (a)(30) A resident's right to keep, have access to, and use their own personal possessions, including toilet articles, and to keep and be allowed to spend their own money, unless limited by statute or regulation is adopted for consistency with the right in Health and Safety Code section 1569.269(a)(30).

These sections also meet the "nonduplication" standard as defined in Government Code section 11349(f). CDSS is including relevant portions of enabling legislation in AB 2171 (Chapter 702, Statutes of 2014) in regulation since duplication is necessary to meet the clarity standard as defined in Government Code section 11349(c).

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is making the following changes:**

- (a)(1) This section is being deleted because it is a duplication of the personal right that applies to both privately and publicly operated facilities in Section 87468.1(a)(1).**

**The duplication is verbatim, with non-substantive exceptions that do not change the meaning of the personal right. These include use of**



the word "have" in Section 87468.1(a)(1), which is used instead of the phrase "be accorded" in Section 87468(a)(1) and Health and Safety Code section 1569.269(a)(1). They also include use of the word "their" in Section 87468.1(a)(1), which is used instead of the words "his/her" in Section 87468(a)(1), but is consistent with use of the word "their" in Health and Safety Code section 1569.269(a)(1), enacted by AB 2171 (Chapter 702, Statutes of 2014).

- (a)(5) This section is being deleted because it is a duplication of the personal right that applies to both privately and publicly operated facilities in Section 87468.1(a)(2).

The duplication is verbatim, with a non-substantive exception that does not change the meaning of the personal right. This exception is use of the word "have" in Section 87468.1(a)(2), which is used instead of the phrase "be accorded" in Section 87468(a)(2) and Health and Safety Code section 1569.269(a)(5), enacted by AB 2171 (Chapter 702, Statutes of 2014).

- (a)(14) This section is renumbered from Section 87468.2(a)(14) to Section 87468.2(a)(12) to accommodate the deletion of duplicative personal rights in Sections 87468.2(a)(1) and (a)(5), above.

CDSS is amending the section to add the phrase "in the admission agreement" before "...a comprehensive description of..." and delete the phrase "provided in the admission agreement" after "...a comprehensive description of..." This amendment is necessary to comply with the requirement that an admission agreement include both a comprehensive description of the method for evaluating residents' needs and the fee schedule, in Health and Safety Code section 1569.269(a)(14), enacted by AB 2171 (Chapter 702, Statutes of 2014). CDSS is also adding the phrase in response to testimony by CANHR, comment 7, that the specified statute requires the admission agreement to include both a comprehensive description for evaluating resident needs and the fee schedule.

- (a)(21) This section is renumbered from Section 87468.2(a)(21) to Section 87468.2(a)(19) to accommodate the deletion of duplicative personal rights in Sections 87468.2(a)(1) and (a)(5), above.

CDSS is amending the section to add the word "review" before "all of their records..." in response to testimony by the California Assisted Living Association (CALA), comment 3, that it is necessary to clarify that a resident is permitted to review their records at, but may not take their records from, the facility. This amendment is also consistent with use of the word "review" in Health and Safety Code

**section 1569.269(a)(21), enacted by AB 2171 (Chapter 702, Statutes of 2014).**

- (a)(22) This section is renumbered from Section 87468.2(a)(22) to Section 87468.2(a)(20) to accommodate the deletion of duplicative personal rights in Sections 87468.2(a)(1) and (a)(5), above.**

**CDSS is amending the section to replace the word "only" with the word "not" and add the phrase "other than those" before "...permitted by state law or regulations..." This amendment is in response to testimony by CANHR, comment 8, that it is necessary to emphasize a resident's protection from involuntary transfers, discharges, or evictions, which shall not occur for reasons other than those permitted by state law or regulations. This amendment is also consistent with Health and Safety Code section 1569.269(a)(22), enacted by AB 2171 (Chapter 702, Statutes of 2014).**

- (a)(23) This section is being deleted because it is a duplication of the personal right that applies to both privately and publicly operated facilities in Section 87468.1(a)(18).**

**The duplication is verbatim, with a non-substantive exception that does not change the meaning of the personal right. This exception is use of the word "the" in Section 87468.1(a)(18), which is used instead of the word "a" in Health and Safety Code section 1569.269(a)(5), enacted by AB 2171 (Chapter 702, Statutes of 2014), but is consistent with use of the word "the" in Section 87468(a)(18).**

- (a)(25) This section is renumbered from Section 87468.2(a)(25) to Section 87468.2(a)(22) to accommodate the deletion of duplicative personal rights in Sections 87468.2(a)(1), (a)(5), and (a)(23), above.**

**CDSS is amending the section to relocate the phrase "according to Health and Safety Code section 1569.156" to the end of the personal right in response to testimony by CANHR, comment 9, requesting that the statutory reference be moved to the end of the sentence for clarity and ease of reading.**

**There are also grammatical changes to delete and add the word "and" to clarify that a resident has the right to receive written information on the right to establish an advance health care directive and the licensee's written policies on honoring those directives.**

**Sections 87468.2(a)(2) through (a)(4), (a)(6) through (a)(13), (a)(15) through (a)(20), (a)(24), and (a)(26) through (a)(30) are renumbered to Sections 87468.2(a)(1) through (a)(3), (a)(4) through (a)(11), (a)(13) through (a)(18),**

(a)(21), (a)(23) through (a)(27) to accommodate the deletion of duplicative personal rights in Sections 87468.2(a)(1), (a)(5), and (a)(23), above.

**Section 87468.2(b)**

**Specific Purpose:**

This section is adopted to *add* regulation to specify that a licensee may not discriminate against a person seeking admission to, or an existing resident of, a facility based on characteristics specified in statute.

**Factual Basis:**

This section is adopted to add regulation to specify that a licensee may not discriminate against a person seeking admission to, or an existing resident of, a facility based on characteristics that include sex, race, color, religion, national origin, marital status, registered domestic partner status, ancestry, actual or perceived sexual orientation, or actual or perceived gender identity, consistent with the nondiscrimination provision in Health and Safety Code section 1569.269(b), enacted by AB 2171 (Chapter 702, Statutes of 2014). CDSS is adding this section in response to testimony by CANHR, associated comment included in comment 5, requesting that rights set forth in Health and Safety Code section 1569.269(b) be included in regulation.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the requirement while maintaining the meaning intended by statute. The Department is adding the phrase "the person's or resident's" before the characteristics specified in statute to clarify that the characteristics included in this regulation apply to a person seeking admission to, or an existing resident of, a facility.

**Section 87468.2(c)**

**Specific Purpose:**

This section is adopted to *add* regulation to specify that an admission agreement and associated documents may not require a resident to waive benefits or rights the resident is entitled to as specified in statute.

**Factual Basis:**

This section is adopted to add regulation to specify that no provision of an admission agreement and associated documents, signed by a resident or the resident's representative, may require a resident to waive benefits or rights the resident is entitled to by the proposed regulations or by federal or other state law or regulation consistent with statute related to personal rights in

Health and Safety Code section 1569.269(c), enacted by AB 2171 (Chapter 702, Statutes of 2014). CDSS is adding this section in response to testimony by CANHR, associated comment included in comment 5, requesting that rights set forth in Health and Safety Code section 1569.269(c) be included in regulation.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the requirement while maintaining the meaning intended by statute. The Department is replacing the phrase "under this chapter," which refers to statute in statute, with the phrase "as specified in these regulations." It is also replacing the phrase "he or she is" in statute with the phrase "they are" in regulation, as necessary for consistency with use of the gender-neutral "their" to refer to residents in regard to personal rights.

#### **Section 87468.2(d) and Handbook Section 87468.2(d)**

##### **Specific Purpose:**

This section is adopted to *add* regulation to specify that residents' family members, friends, and representatives have the right to organize and participate in a family council as specified in statute.

##### **Factual Basis:**

This section is adopted to add regulation to specify that people in residents' support systems, which include family members, friends, and representatives have the right to organize and participate in a family council that is established according to Health and Safety Code section 1569.158 consistent with statute related to personal rights in Health and Safety Code section 1569.269(d), enacted by AB 2171 (Chapter 702, Statutes of 2014). CDSS is adding this section in response to testimony by CANHR, associated comment included in comment 5, requesting that rights set forth in Health and Safety Code section 1569.269(d) be included in regulation.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the requirement while maintaining the meaning intended by statute. The Department is replacing the phrase "pursuant to Section 1569.158" in statute with the phrase "according to Health and Safety Code section 1569.158" in regulation. This clarification is necessary to write regulation in layperson's terms and clarify the code in statute that is being referred to.

Handbook language is added for ease of the reader, to show text from the referenced statute and prevent the reader from having to go to another location to read text from the statute. Health and Safety Code

section 1569.158 defines "family council" and establishes requirements for policy, meetings, protocols, promotion of the family council, and interface with facility staff. It also establishes that a violation of this requirement constitutes a violation of personal rights that is subject to civil penalty.

#### **Section 87468.2(e)**

##### **Specific Purpose:**

This section is adopted to *add* regulation to specify that the personal rights specified in these regulations are in addition to any other rights provided by law as specified in statute.

##### **Factual Basis:**

This section is adopted to add regulation to specify that the personal rights specified in these regulations apply in addition to any other rights provided by law consistent with statute related to personal rights in Health and Safety Code section 1569.269(e), enacted by AB 2171 (Chapter 702, Statutes of 2014). An example of other law related to personal rights is Civil Code section 51, which specifies in part that "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments..." CDSS is adding this section in response to testimony by CANHR, associated comment included in comment 5, requesting that rights set forth in Health and Safety Code section 1569.269(e) be included in regulation.

#### **Section 87468.2(b)**

##### **Specific Purpose:**

This section is adopted to *add* regulation to specify that the Department will not waive the personal rights specified in Subsection (a).

##### **Factual Basis:**

Adoption of regulation is necessary for clarity and consistency in applying the statutory Resident's Bill of Rights in privately operated RCFEs. All of the personal rights specified in Subsection (a) are from statute, which cannot be waived at the discretion of CDSS.

**Modification:**

Following the March 27, 2018 public hearing, CDSS is renumbering Section 87468.2(b) to Section 87468(f) to accommodate addition of Sections 87468.2(b) through (e), above.

To clarify why the proposed regulations cannot be waived, CDSS is also replacing the phrase "shall not" with the phrase "does not have the authority to." CDSS does not have the authority to waive the requirements specified in subsection (a), which are delineated in statute.

**Section 87468.3(a) through (a)(8)**

**Specific Purpose:**

These sections are adopted to *add* regulation to specify that "All residents in residential care facilities for the elderly shall be protected from all of the actions specified in this section."

They are also adopted to *add* regulation to prohibit a licensee or RCFE staff from taking any of the specified actions on the basis of the actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status, of a resident.

In addition, these sections are adopted to *add* the Lesbian, Gay, Bisexual, Transgender (LGBT) Bill of Rights to regulation.

**Factual Basis:**

Adoption of regulation is necessary for consistency in applying the statutory LGBT Residents' Bill of Rights to RCFEs.

- (a) To comply with statute, all RCFEs are subject to, and all residents in RCFEs are protected by, the provisions of this section. Health and Safety Code section 1569.318 specifies that "Every residential care facility for the elderly shall abide by the provisions of the Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Residents' Bill of Rights (Chapter 2.45 (commencing with Section 1439.50))."

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify that the statutory LGBT Residents' Bill of Rights is applied to all residents in RCFEs. These rights, such as the right to be referred to by a resident's preferred name or pronouns, are appropriate to all residents regardless of whether they are LGBT.

The prohibition of actions specified in this section is necessary for consistency with statute. Health and Safety Code section 1439.51 specifies that, "...it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status."

- (a)(1) The requirement that a licensee or facility staff not deny admission to a facility, transfer or refuse to transfer a resident within the facility or to another facility, or discharge or evict a resident from a facility on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(1).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "long-term care" before the word "facility" in statute so the phrase reads "a facility" in regulation. This clarification is necessary because RCFEs are not considered to be among the long-term care facilities, such as Skilled Nursing Facilities, governed by Health and Safety Code section 1439.50, et seq.

- (a)(2) The requirement that a licensee or facility staff not deny a request by residents to share a room on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(2).

- (a)(3) The requirement that a licensee or facility staff not, where rooms are assigned by gender, assign, reassign, or refuse to assign, a room to a resident who is transgender other than according to the resident's gender identity, unless at the request of the resident, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(3).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the words "assigning," "reassigning," and "refusing" in statute with the words "assign," "reassign," and "refuse" in regulation for consistency with the tense of words, such as "deny," in the other rights in regulation.

CDSS is reorganizing the phrases "transgender resident" and "transgender resident's" in statute to read "resident who is transgender" in

regulation. This clarification is necessary to use "person first" language that places the person (resident) before the characteristic of the person (transgender). CDSS is also omitting the first reference to the word "transgender" before the word "resident's" in statute since it is duplicative.

CDSS is replacing the phrase "in accordance with" in statute with the phrase "according to" in regulation. This clarification is necessary to use more modern and easily understood words.

- (a)(4) The requirement that a licensee or facility staff not prohibit the resident from using, or harass a resident who seeks to use or uses, a restroom available to others of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender-nonconforming, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(4). In addition, a definition of "harassment" included in the prohibited action is adopted for consistency.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is replacing the phrase "does use" in statute with the word "uses" in regulation. The Department is also omitting the phrase "in order" before the phrase "to gain" in statute from regulation. This clarification is necessary to reduce the number of words and use more easily understood language in this right.

- (a)(5) The requirement that a licensee or facility staff not willfully and repeatedly fail to use a resident's preferred name or pronouns after being informed of the resident's preferred name or pronouns in a clear manner, and on the basis of actual or perceived characteristics of a resident specified in subsection (a), is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(5).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the word "resident's" before the word "preferred" in regulation. This clarification is necessary to indicate that the preference is that of the resident.

CDSS is replacing the phrase "clearly informed of the preferred name or pronoun" with "informed of the resident's preferred name or pronouns in a clear manner." This clarification is necessary to place the information provided before the manner in which it is provided.



- (a)(6) The requirement that a licensee or facility staff not deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics permitted for any other resident on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(6).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is omitting the phrase "that are" in statute from regulation. This phrase is not necessary to adequately convey the meaning intended by statute.

- (a)(7) The requirement that a licensee or facility staff not restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the licensee applies the restriction uniformly to all residents in a nondiscriminatory manner, on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(7). The provision that a licensee is not precluded from banning sexual relations as long as the ban is applied uniformly to all residents in a nondiscriminatory manner is also adopted for consistency with that right.

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the phrase "the licensee applies" to and reorganizing the phrase "unless the restriction is uniformly applied " in statute to read "unless the licensee applies the restriction uniformly" in regulation. This clarification is necessary to indicate that a licensee is responsible for uniformly applying a restriction.

CDSS is replacing the phrase "This section does not preclude a facility" in statute with the phrase "A licensee is not precluded" in regulation. A licensee, not a RCFE, which is an inanimate object, can implement a ban.

CDSS is omitting the phrases "or restricting" and "or restriction" in statute from regulation. This clarification is necessary to avoid repeating the concept of restricting sexual relations in the right. The first sentence of the right permits general restrictions, including those on sexual relations, and the second sentence of the right permits banning sexual relations.

CDSS is adding additional language to the right to address situations in which privacy is required, **including, but not limited to, consensual sexual relations**, and notifying residents of RCFE restrictions.

**Persons who may be affected by a resident's need for privacy include other residents or the resident's roommate, who normally have access to the room. These persons must have the opportunity to consent, or agree, to the resident using the room for privacy.** This clarification is necessary to assist licensees in handling privacy amongst residents and informing residents of any restrictions in a RCFE.

- (a)(8) The requirement that a licensee or facility staff not deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care to the resident in a manner that unduly demeans the resident's dignity or causes avoidable discomfort, on the basis of actual or perceived characteristics of a resident specified in subsection (a) is adopted for consistency with this action being prohibited by Health and Safety Code section 1439.51(a)(8).

CDSS is using its broad authority to promulgate regulations for RCFEs in Health and Safety Code section 1569.30 to clarify the right while maintaining the meaning intended by statute. The Department is adding the phrase "to the resident" after the phrase "provide medical or nonmedical care" in statute so that the phrase reads "provide medical or nonmedical care to the resident" in regulation. This clarification is necessary to indicate a resident must be given care consistent with the right.

These sections also meet the "nonduplication" standard as defined in Government Code section 11349(f). CDSS is including relevant portions of enabling legislation in SB 219 (Chapter 483, Statutes of 2017) in regulation since duplication is necessary to meet the clarity standard as defined in Government Code section 11349(c).

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is adding the phrase "privately and publicly operated" before "residential facilities for the elderly..." in Section 87468.3(a). This change is necessary to clarify that personal rights apply to residents in privately and publicly operated facilities in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.**

**Section 87468.3(c)**

**Specific Purpose:**

This section is adopted to *add* regulation to specify that the Department will not waive the personal rights specified in subsection (a).

Factual Basis:

Adoption of regulation is necessary for clarity and consistency in applying the statutory LGBT Residents' Bill of Rights in RCFEs. All of the personal rights specified in subsection (a) are from statute, which cannot be waived at the discretion of CDSS.

Modification:

**Following the March 27, 2018 public hearing and to clarify why the proposed regulations cannot be waived, CDSS is replacing the phrase "shall not" with the phrase "does not have the authority to." CDSS does not have the authority to waive the requirements specified in subsection (a), which are delineated in statute.**

Section 87506(b) and (b)(1)

Specific Purpose:

These sections are amended to *add* the word "resident's" before the word "record" in subsection (b) and *add* the phrase "as indicated by the resident" after "Resident's name" in subsection (b)(1).

Factual Basis:

Amendment of this section is necessary to clarify requirements, and comply with statutory requirements, for resident records.

- (b) It is necessary to indicate that the record referred to in the section is required for each resident in a RCFE.
- (b)(1) The requirement that a resident's record also include the resident's name, as indicated by the resident, is necessary to comply with the requirements of the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017). A resident's records must include the "correct name, as indicated by the resident" as specified in Health and Safety Code section 1439.52, which applies to RCFEs as specified in Health and Safety Code section 1569.318.

Modification:

**Following the March 27, 2018 public hearing, CDSS is adding the word "legal" before "name," adding the phrase "...and preferred name," before "as indicated by the resident" in Section 87506(a)(1). The change to add "legal" is in response to testimony by CALA, comment 7, requesting that CDSS amend the regulation to include the resident's legal name as part of the**

documentation. These changes are necessary to clarify that a resident's record must reflect both the resident's legal and preferred name, and distinguish between the two.

CDSS is also removing "...and Social Security number" from Section 87506(a)(1). The requirement that a resident's record include Social Security number is relocated to, and adopted in, Section 87506(b)(2).

#### **Section 87506(b)(2)**

##### **Specific Purpose:**

This section is adopted to *re/locate* the requirement that each resident's record include Social Security number from Section 87506(b)(1) to Section 87506(b)(2) for clarity purposes.

##### **Factual Basis:**

This change is necessary to separate the concept of name from the concept of Social Security number.

#### **Section 87506(b)(3) Renumbered from Section 87506(b)(2)**

##### **Specific Purpose:**

This section is adopted to *add* the requirement that each resident's record include gender identity and pronoun, as indicated by the resident.

##### **Factual Basis:**

Adoption of this section is necessary to comply with the requirements of the LGBT Residents' Bill of Rights enacted by SB 219 (Chapter 483, Statutes of 2017). A resident's records must include the gender identity of, and pronoun as indicated by, the resident as specified in Health and Safety Code section 1439.52, which applies to RCFEs as specified in Health and Safety Code section 1569.318.

##### **Modification:**

Following the March 27, 2018 public hearing, CDSS is renumbering Section 87506(b)(2) to Section 87506(b)(3) to accommodate relocating and adopting the requirement that a resident's record include the resident's Social Security number in Section 87506(b)(2).

Sections 87506(b)(~~34~~) through (b)(~~16~~17) are Renumbered from  
Sections 87506(b)(~~23~~) through (b)(~~15~~16)

Specific Purpose/Factual Basis:

Sections 87506(b)(2) through (b)(15) are renumbered to Sections 87615(b)(3) through (b)(16) to accommodate the adoption of Section 87506(b)(2). Amendment of Section 87506(b)(7) is necessary to replace the phrase "responsible persons" with the phrase "the resident's representative." CDSS is using its broad authority granted by Health and Safety Code section 1569.30 to require that residents' representatives be able to visit a RCFE, informed about care, and have communications answered for consistency with existing regulations. Section 87101 defines "representative" as "an individual who has authority to act on behalf of the resident; including but not limited to, a conservator, guardian, person authorized as agent in the resident's valid advance health care directive, the resident's spouse, registered domestic partner, or family member, a person designated by the resident, or other surrogate decisionmaker designated consistent with statutory and case law." People in these roles act on behalf of residents and may have a significant role in determining residents' care and services. There are grammatical changes to the section to revise "names" to "name," "addresses" to "address," and "telephone numbers" to "telephone number."

Amendment of Sections 87506(b)(9) and (b)(13) through (b)(16) are necessary to make a technical change to remove reference to the title of a section. It is unnecessary for the number of another section of the RCFE regulations to be followed by the title of the section.

Amendment of Section 87506(b)(10) is necessary to make a technical change to remove reference to subsection (a) in reference to Section 87611. These subsections may change in the future and result in incorrect references in this section. Amendment of Section 87506(b)(12) is necessary to replace the word "the" with the word "needed" and remove the gender-specific phrase "he needs."

The requirement applies equally to all resident records in RCFEs regardless of a resident's gender or gender identity.

**Modification:**

**Following the March 27, 2018 public hearing, CDSS is renumbering Section 87506(b)(2) through (b)(15) to Section 87506(b)(3) through (b)(17) to accommodate the adoption of Section 87506(b)(2).**

**Amendment of the renumbered Sections 87506(b)(10) and (b)(14) through (b)(17) are necessary to make technical changes to restore references to the title of a section. CDSS is making this change in response to testimony by CALA, comment 8, requesting that CDSS keep the titles that accompany the regulation section numbers for ease of the reader.**

b) Identification of Documents Upon Which Department Is Relying

Documents relied upon in proposing these regulations are:

AB 2171 (Chapter 702, Statutes of 2014);

AB 878 (Chapter 526, Statutes of 1993);

SB 219 (Chapter 483, Statutes of 2017);

SB 895 (Chapter 704, Statutes of 2014);

California Department of Public Health All Facility Letter (AFL) 08-09 on Mandated Reporting of Staging of Pressure Ulcers, dated May 27, 2008;

National Pressure Ulcer Advisory Panel (NPUAP) Press Release on change in terminology from pressure ulcer to pressure injury and updates the stages of pressure injury, dated April 13, 2016;

National Pressure Ulcer Advisory Panel (NPUAP), European Pressure Ulcer Advisory Panel (EPUAP) and Japanese Society of Pressure Ulcers (JSPU), et al., as sponsored by Gaymar Industries, Inc. (now Stryker) on Shear: A contributory factor in pressure ulceration slide set on NPUAP website September 21, 2016; and WoundSource article on Identifying Types of Tissues Found in Pressure Ulcers, dated November 20, 2014.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or on local school districts. There are no reimbursable state-mandated costs under Section 17500 et seq. of the Government Code, because these regulations only make technical and clarifying changes.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives than the one proposed because this was the most effective. No reasonable alternative has been presented for review.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Existing regulatory personal rights would continue to apply to privately and publicly operated RCFEs. Expanded personal rights regulations to implement

AB 2171 would apply to privately operated RCFEs. Expanded personal rights regulations to implement SB 219 would apply to publicly and privately operated RCFEs. Regardless of number of residents, all licensees would be required to post personal rights, nondiscrimination notice, and complaint information, and post this information in English and any other language in which five percent or more of the residents can only read that other language.

There will be some administrative costs to licensees of all RCFEs as a result of AB 2171, SB 219, and SB 895. In regard to posting personal rights, licensees of privately operated RCFEs would need to post personal rights as specified in Section 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities and in Section 87468.2, Personal Rights of Residents in Privately Operated Facilities. Licensees of publicly operated RCFEs would need to post personal rights as specified in Section 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities. Licensees of both privately and publicly operated RCFEs would need to post personal rights as specified in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.

Licensees would need to update admission agreements as they relate to resident personal rights and RCFE procedures as they relate to posting these rights, nondiscrimination notice, and complaint information in other languages read by five percent or more of residents in a RCFE. Licensees would also need to develop and implement a method for collecting information from residents on the language they read and compile this information into a single list that is kept accurate and current. CDSS anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 currently require a register of residents, which would be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights, nondiscrimination notice, and complaint information whenever the composition of languages primarily read by residents' changes.

Miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable wounds. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses in California.

f) Economic Impact Assessment

In accordance with Government Code section 11346.3(b), CDSS has made economic impact assessments regarding the proposed regulations to implement: AB 2171 (Chapter 702, Statutes of 2014); AB 878 (Chapter 526, Statutes of 1993); SB 219 (Chapter 483, Statutes of 2017); and SB 895 (Chapter 704, Statutes of 2014). CDSS has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting

businesses, including the ability of California businesses to compete with businesses in other states, as identified by the following:

### ***Creation or Elimination of Jobs Within the State of California***

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither create nor eliminate jobs in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the creation or elimination of jobs in the State of California.

### ***Creation of New or Elimination of Existing Businesses Within the State of California***

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of



miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither create nor eliminate existing businesses in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the expansion or elimination of existing businesses in the State of California.

### ***Expansion or Elimination of Businesses Currently Doing Business Within the State of California***

As a result of the passage of AB 2171 and SB 219, these amendments modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. AB 2171 requires licensees to provide residents and their representatives with written copies of these personal rights, and CDSS is using its broad authority to promulgate regulations to apply this requirement equally to the personal rights in SB 219. As a result of the passage of SB 219, these amendments require that licensees post a nondiscrimination notice, modifying the requirement to post personal rights that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. As a result of the passage of SB 895, these amendments require that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008.

The proposed amendments to regulations in this regulations package will neither expand nor eliminate businesses currently doing business in the State of California. They amend existing regulatory requirements as a result of changes in statutory requirements enacted by the bills specified above. The amendments to regulations are consistent with requirements that have been in existing regulations for a number of years. For this reason, CDSS has determined that the proposed regulations will not have an impact on the expansion or elimination of businesses currently doing business in the State of California.

### ***Benefits of the Regulations***

CDSS anticipates that the proposed regulations will benefit the health and welfare of residents receiving care in privately operated RCFEs by ensuring that they have

statutory personal rights that are to be observed by licensees. These personal rights are in the spirit of the Resident Bill of Rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. These regulations will allow residents to have additional personal rights in statute that are more responsive to their individual desires and needs, such as the right to: receive a comprehensive description of how residents' needs are evaluated; share a room with any other resident of their choice when there is mutual consent; and prompt access to all of their records. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights. These regulations will also further address the needs of residents who are lesbian, gay, bisexual, and transgender. The personal rights being implemented in these regulations provide essential protection for residents of all RCFEs who are often vulnerable elderly and without advocates or family to ensure that their rights are observed. They are intended to prevent discrimination and promote fairness and equity. The proposed regulations will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information so that they can advocate for themselves when necessary. In addition, the proposed regulations will benefit licensee compliance in providing care to residents. There are no additional benefits for worker safety or the state's environment, as the regulations only affect residents in California RCFEs.

### ***Documents Relied Upon***

Documents relied upon in proposing these regulations are:

AB 2171 (Chapter 702, Statutes of 2014); AB 878 (Chapter 526, Statutes of 1993); SB 219 (Chapter 483, Statutes of 2017); SB 895 (Chapter 704, Statutes of 2014); California Department of Public Health AFL 08-09 on Mandated Reporting of Staging of Pressure Ulcers, dated May 27, 2008; National Pressure Ulcer Advisory Panel (NPUAP) Press Release on change in terminology from pressure ulcer to pressure injury and updates the stages of pressure injury, dated April 13, 2016; National Pressure Ulcer Advisory Panel (NPUAP), European Pressure Ulcer Advisory Panel (EPUAP) and Japanese Society of Pressure Ulcers (JSPU), et al., as sponsored by Gaymar Industries, Inc. (now Stryker) on Shear: A contributory factor in pressure ulceration slide set on NPUAP website September 21, 2016; and WoundSource article on Identifying Types of Tissues Found in Pressure Ulcers, dated November 20, 2014.

#### **g) Benefits Anticipated from Regulatory Action**

CDSS anticipates that the proposed regulations will benefit the health and welfare of residents receiving care in privately operated RCFEs by ensuring that they have statutory personal rights that are to be observed by licensees. These personal rights are in the spirit of the Resident Bill of Rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. These regulations will allow residents to have additional personal rights

in statute that are more responsive to their individual desires and needs, such as the right to: receive a comprehensive description of how residents' needs are evaluated; share a room with any other resident of their choice when there is mutual consent; and prompt access to all of their records. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights, which includes a clarification and strengthening of a personal right, in existing regulations. These regulations will also further address the needs of residents who are lesbian, gay, bisexual, and transgender. The personal rights being implemented in these regulations provide essential protection for residents of all RCFEs who are often vulnerable elderly and without advocates or family to ensure that their rights are observed. These personal rights are intended to prevent discrimination and promote fairness and equity. The proposed regulations will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information so that they can advocate for themselves when necessary. In addition, the proposed regulations will benefit licensee compliance in providing care to residents. These proposed regulations have no direct benefit to worker safety or the state's environment, as the proposed regulations only affect residents in RCFEs.

**j) Testimony and Response (March 12, 2018 through March 27, 2018)**

CDSS noticed these regulations to the public for a 15-day comment period through Notification of 15-Day Public Availability of Changes to Regulations and Supporting Documents and Information, dated March 12, 2018. The public comment period closed at 5:00 p.m. on March 27, 2018.

**The following written testimony was received during the 15-day comment period:**

**Selena Coppi Hornback, Associate Director of Public Policy, California Assisted Living Association (CALA)**

**1. Handbook Sections 87109(b), 87468(a)(10), and 87468.2(a)(14) and (28)**

**General Comment:**

Handbook Sections: 87109, Health and Safety Code section 1569.191 is also included in 87111; 87468.1, Health and Safety Code section 1569.313 is also included in 87208 and 87507; Health and Safety Code section 1569.655 is included in 87507 and partially in 87101; and Health and Safety Code section 1569.153 is also included in 87218.

Comment:

The Department added several handbook sections to the regulations. While CALA understands the reason is to provide ease to the reader, several of the added handbook sections are currently contained in other regulatory sections within Title 22. Frequently repeating the same existing statute throughout the regulations might lose usefulness over time.

Response:

The Department is maintaining proposed handbook of Health and Safety Code sections 1569.191, 1569.313, 1569.655, and 1569.153 for ease of use. Handbook provides a reader with full statutory context for a regulation, to provide greater clarity. It is easier for a reader to read the statute referenced in regulation on the page where it is referenced. Also, a reader may not be aware that the handbook is also in other sections.

**2. Section 87468.1(a)(4)**

Comment:

Licensees are already required to provide information to residents and representatives on procedures for registering complaints, which includes telephone numbers for the Department and the Long-Term Care Ombudsman. Licensees must also hang a 20x26 poster that informs residents and others of the complaint information. The phone numbers indicate how to contact the Department and the Long-Term Care Ombudsman.

**CALA recommends deleting the additional proposed language.**

*"To be informed by the licensee of the provisions of law regarding complaints and of procedures for confidentially registering complaints, including, but not limited to, the address and telephone number for the complaint receiving unit of the Department, and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term care ombudsman regarding grievances in regard to the facility."*

Response:

The Department is maintaining the proposed language. As modified following the March 27, 2018 public hearing, Section 87468.1 now applies to both privately and publicly operated facilities. This language is consistent with the personal right of a resident "To contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the licensee..." as specified in Health and Safety Code section 1569.269(a)(12), which applies to privately operated RCFEs. A resident of a publicly operated

RCFE also has the right to contact these agencies to report complaints. This language is also necessary to provide transparency for residents and their representatives in regard to the requirement that licensees inform residents and representatives on procedures for registering complaints.

### **3. Section 87468.2(a)(21)**

#### **Comment:**

The Department deleted the word "review" from the phrase "to review all" to "make it clear that a resident has access to all of their records, which includes the resident being permitted to review them." There is no need for the change because residents currently have the right to review their records and the right to receive copies. Nothing more is needed and removing the word "review" could be problematic because it could be interpreted to mean that a resident can take the original records. The resident may review the originals or take photocopies.

**CALA suggests keeping the word "review" in the resident right.**

#### **Response:**

The Department is amending the proposed regulation to reflect the requested change. This change is consistent with the personal right of a resident "To have prompt access to review all of their records and to purchase photocopies. Photocopied records shall be promptly provided, not to exceed two business days, at a cost not to exceed the community standard for photocopies" in Health and Safety Code section 1569.269(a)(21).

The Department is amending Section 87468.2(a)(21), renumbered to Section 87468.2(a)(19), to read:

*(2119) To have prompt access to review all of their records and to purchase photocopies of their records. Photocopied records shall be provided within two (2) business days and at a cost that does not exceed the community standard for photocopies.*

### **4. Section 87468.2(b)**

#### **Comment:**

The Department states the factual basis for adding this regulation is the necessity "for clarity and consistency in applying the statutory Resident's Bill of Rights in privately operated RCFEs. All of the personal rights specified in Subsection (a) are from statute, which cannot be waived at the discretion of CDSS." This language is unnecessary because the language is in statute. The

proposed language cannot be found anywhere else in Title 22 regulations and adding it here sets a bad precedent. The Department already has the authority to deny any waiver request.

**CALA suggests 87468.2(b) be deleted.**

Response:

The Department acknowledges the comment and recognizes this regulation references statutorily mandated requirements; however, it does not have the authority to waive the statutorily mandated personal rights specified in subsection (a). In addition, it has been the practice of the Department for ease of reference of our regulated community to embed statutory requirements within regulations. Thus, the Department finds, on balance, the addition of this language is necessary for effective regulatory implementation.

To clarify why the proposed regulations cannot be waived, the Department is amending Section 87468.2(b), renumbered to Section 87468.2(f), by adding language to indicate that it does not have the authority to waive requirements delineated in statute. This language reads:

*(bf) The Department ~~shall~~ does not have the authority to waive the personal rights specified in subsection (a).*

**5. Section 87468.3(a)(7)**

Comment:

The Department states the factual basis for adding this additional language to the personal right is "to address situations in which privacy is required..." It is unclear what is meant from the wording that the Department used.

**CALA suggests the statement be reworded to provide more clarity to licensees and residents on this right.**

Response:

The Department is adding language to the factual basis to clarify what privacy means. The Department is amending the factual basis, to read:

"CDSS is adding additional language to the right to address situations in which privacy is required, **including, but not limited to, consensual sexual relations**, and notifying residents of RCFE restrictions. **Persons who may be affected by a resident's need for privacy include other residents or the resident's roommate, who normally have access to the room. These persons must have the opportunity to consent, or**

**agree, to the resident using the room for privacy.** This clarification is necessary to assist licensees in handling privacy amongst residents and informing residents of any restrictions in a RCFE."

#### **6. Section 87468.3(c)**

Comment:

The Department states the factual basis for adding the regulation is the necessity "for clarity and consistency in applying the statutory LGBT Resident's Bill of Rights in RCFEs. All of the personal rights specified in subsection (a) are from statute, which cannot be waived at the discretion of CDSS." This language is unnecessary because the language is in statute. The proposed language cannot be found anywhere else in Title 22 regulations and adding it here sets a bad precedent. The Department already has the authority to deny any waiver request.

**CALA suggests 87468.3(c) be deleted.**

Response:

The Department acknowledges the comment and recognizes this regulation references statutorily mandated requirements; however, it does not have the authority to waive the statutorily mandated personal rights specified in subsection (a). In addition, it has been the practice of the Department for ease of reference of our regulated community to embed statutory requirements within regulations. Thus, the Department finds, on balance, the addition of this language is necessary for effective regulatory implementation.

To clarify why the proposed regulations cannot be waived, the Department is amending Section 87468.3(c) by adding language to indicate that it does not have the authority to waive requirements delineated in statute. This language reads:

*(c) The Department ~~shall~~ does not have the authority to waive the personal rights specified in subsection (a).*

#### **7. Section 87506(b)(1)**

Comment:

It is important to document the resident's legal name as well as their preferred name.

**CALA suggests amending the regulation to include the resident's legal name be part of the documentation.**

Response:

The Department is adding the concept of legal name to the proposed regulation.

The Department is amending Section 87506(b)(1), along with making other modifications to the section, to read:

(b) Each **resident's** record shall contain at least the following information:

(4) Resident's *legal name, and preferred name, as indicated by the resident, and Social Security number.*

**8. Section 87506(b)(9) and (b)(13) through (b)(16)**

Comment:

Having the title of the section is helpful for ease of the reader. Regulation sections have been renumbered at various times over the years which could create confusion if the associated title is removed.

CALA suggests keeping the titles that accompany the regulation section numbers.

Response:

The Department is restoring the titles that accompany the regulation section numbers. It has been customary to include titles of sections in regulations for ease of use.

For example, the Department is amending Section 87506(b)(9), renumbered to Section 87506(b)(10), to read:

(8910) Reports of the medical assessment specified in Section 87458, **Medical Assessment**, *Medical Assessment*, and of any special problems or precautions.

**Patricia L. McGinnis and Jody L. Spiegel, California Advocates for Nursing Home Reform (CANHR)**

**1. Section 87101(p)(7)**

Comment:

The terms "privately operated facility," "publicly operated facility" and "government entity" are not self-evident, and CANHR believes that additional



explanation is necessary to provide clarity in understanding what a publicly operated facility is as well as how it differs from a privately operated facility. CANHR's proposed amendment adds a definition of "privately operated facility" and common examples of government entities from the definitions of "applicant" and "licensee" in Sections 87101(a)(9) and (l)(3) to provide clarification in layperson's terms. Since the vast majority of facilities are privately operated, CANHR believes it is critical to include a definition of "privately operated facility" rather than relying on a person to intuit which entities are not included in the definition of "publicly operated facility."

CANHR recommends that the subsection be amended as follows:

- (7) "Privately Operated Facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.
- (8) "Publicly Operated Facility" means a residential care facility for the elderly that is licensed to a city, county, or other government entity.

Response:

The Department is adding a proposed definition for "privately operated facility" and modifying the proposed definition for "publicly operated facility." These proposed definitions are consistent with the private and public entities included in existing definitions for "applicant" in Section 87101(a)(9) and "licensee" in Section 87101(l)(3).

The Department is adding Section 87101(p)(5), for sequence with other definitions, to read:

- (5) *"Privately Operated Facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.*

The Department is also modifying Section 87101(p)(7), renumbered to Section 87101(p)(9), for sequence with other definitions, to read:

- (79) "Publicly Operated Facility" means a residential care facility for the elderly that is licensed to a *city, county, or other* government entity.

## 2. Section 87468(a)

### Comment:

CANHR believes that including parenthetical information in the lead section will improve clarity and assist licensees and consumers in identifying the applicable rights.

CANHR recommends that the subsection be amended as follows:

- (a) Residents in residential care facilities for the elderly shall have personal rights which include, but are not limited to, those listed below in Sections 87468.1 (publicly operated facilities) or 87468.2 (privately operated facilities), as applicable to the facility, and those listed in Section 87468.3.

### Response:

The Department is making a similar modification to that requested by adding the titles that accompany the regulation section numbers to the proposed regulation for ease of use.

The Department is amending Section 87468(a), to read:

- (a) ~~Each resident~~ Residents in residential care facilities for the elderly shall have personal rights which include, but are not limited to, ~~the following: those listed below in Sections 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities, or and 87468.2, Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, and those listed in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.~~

## 3. Sections 87468.1 and 87468.2

### Comment:

**THE RIGHTS OF RESIDENTS IN PRIVATELY OPERATED FACILITIES SHOULD BE SET FORTH BEFORE THE RIGHTS OF RESIDENTS IN PUBLICLY OPERATED FACILITIES.**

CANHR agrees that dividing up resident rights into a lead section and separate sections applicable to privately and publicly operated facilities improves clarity, but recommends that the regulation regarding rights for privately operated facilities be placed before the regulation for publicly operated facilities, i.e., Section 87468.1 should set forth the "Personal Rights of Residents in Privately Operated Facilities" and Section 87468.2 should set forth the "Personal Rights of Residents in Publicly Operated Facilities." The vast majority of RCFEs are

privately operated, and it does not make sense to list the rights applicable to an extremely small group of residents before the rights applicable to almost all RCFE residents in California, i.e., the exception should not be before the rule.

CANHR recommends that the regulation regarding rights for privately operated facilities be placed before the regulation for publicly operated facilities, i.e., Section 87468.1 should set forth the "Personal Rights of Residents in Privately Operated Facilities" and Section 87468.2 should set forth the "Personal Rights of Residents in Publicly Operated Facilities."

Response:

The Department is instead setting the rights of residents in both privately and publicly operated facilities before the rights of residents in privately operated facilities. Residents in privately and publicly operated facilities continue to be protected by the personal rights in the existing Section 87468, which are adopted in the new Section 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities. Residents in privately operated facilities are also protected by the personal rights adopted in the new Section 87468.2, Personal Rights of Residents in Privately Operated Facilities, consistent with the personal rights in Health and Safety Code section 1569.269, enacted by AB 2171 (Chapter 702, Statutes of 2014).

**4. Section 87468.1(a)**

Comment:

CANHR believes that additional explanation is necessary to provide clarity in understanding what a publicly operated facility is as well as how it differs from a privately operated facility. These terms are not self-evident. By adding the definition of "Publicly Operated Facility" to the introductory paragraph, a layperson will not be required to go to another regulation to determine whether the rights in this section are applicable to the subject facility.

CANHR recommends that the subsection be amended as follows:

- (a) Residents in publicly operated residential care facilities for the elderly shall have all of the following personal rights: "Publicly Operated Facility" means a residential care facility for the elderly that is licensed to a city, county, or other government entity.

Response:

The Department is making a similar modification to that requested by adding proposed definitions for both "privately operated facility" and "publicly operated facility" in Section 87468, Personal Rights of Residents for clarity purposes.

Section 87468 serves as the lead section for subsequent sections that set forth the personal rights in privately and publicly operated facilities.

The Department is amending Section 87468(a), to read:

- (a) ~~Each resident~~ Residents in residential care facilities for the elderly shall have personal rights which include, but are not limited to, the following: those listed below in Sections 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities, or and 87468.2, Personal Rights of Residents in Privately Operated Facilities, as applicable to the facility, and those listed in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.
- (1) *"Privately operated facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.*
- (2) *"Publicly operated facility" means a residential care facility for the elderly that is licensed to a city, county, or other government entity.*

## **5. Section 87468.2**

Comment:

**PROPOSED SECTION 87468.2 "PERSONAL RIGHTS OF RESIDENTS IN PRIVATELY OPERATED FACILITIES" MUST INCLUDE ALL OF THE RIGHTS IN HEALTH AND SAFETY CODE SECTION 1569.269 AND CURRENT SECTION 87468.**

Residents in privately operated facilities have all of the rights set forth in both Health and Safety Code section 1569.269 and current Section 87468. [Health and Safety Code section 1569.269(e).] However, proposed section 87468.2 "Personal Rights of Residents in Privately Operated Facilities" only sets forth the rights listed in Health and Safety Code section 1569.269(a). As stated by the Department in the Addendum to the Initial Statement of Reasons at page 8:

"These statutes establish personal rights for residents in privately operated RCFEs and specifies that these rights are to be honored in addition to those addressed by existing regulations.... The remainder of these regulations comprise existing personal rights in Section 87468 that have applied, and will continue to apply as amended, to both privately operated and publicly operated RCFEs."

The list of rights in Proposed Section 87468.2 fails to include existing rights set forth in Health and Safety Code section 1569.269(b)-(e) and Section 87468(a).

Health and Safety Code section 1569.269(a) sets forth many, but not all of the rights provided in existing regulation at Section 87468(a).

To comply with statute and provide a comprehensive and accurate list of rights of residents in privately operated RCFEs, Proposed Section 87468.2 should be amended to include the rights listed in the following laws and regulations: Health and Safety Code section 1569.269(b), (c), (d), (e); and Proposed Section 87468.1(a)(4), (5), (6), (7), (8), (9), (10), (12), (13), (14), (15), (16), (17).

Associated Comment:

As discussed above under General Comments #B, Proposed Section 87468.2 is incomplete, and fails to include statutorily required rights of residents in privately operated facilities set forth in Section 87468(a) and Health and Safety Code section 1569.269(b)-(e).

Proposed Section 87468.2 should be revised to include the following rights set forth in current Section 87468 (as modified in Proposed Section 87468.1(a)):

- (4) To be informed by the licensee of the provisions of law regarding complaints and of procedures for confidentially registering complaints, including, but not limited to, the address and telephone number for the complaint receiving unit of the Department, and how to contact the Community Care Licensing Division of the California Department of Social Services, and the long-term care ombudsman regarding grievances in regard to the facility.
- (5) To have the freedom to attend religious services or activities of their choice either in or outside the facility and to have visits from the spiritual advisor of their choice.
- (6) To leave or depart the facility at any time and to not be locked into any room, building, or on facility premises by day or night. This does not prohibit a licensee from establishing house rules, such as locking doors at night to protect residents, or barring windows against intruders, with permission from the Department.
- (7) To visit the facility prior to residence along with their representatives.
- (8) To have their representatives regularly informed by the licensee of activities related to care or services, including ongoing evaluations, as appropriate to their needs.
- (9) To have communications to the licensee from their representatives answered promptly and appropriately.

- (10) To be informed of the licensee's policy concerning visits and other communications with residents, according to Health and Safety Code section 1569.313.
- (12) To wear their own clothes; to keep and use their own personal possessions, including their toilet articles; and to keep and be allowed to spend their own money
- (13) To have access to individual storage space for private use.
- (14) To have reasonable access to telephones, to both make and receive confidential calls. The licensee may require reimbursement for long distance calls
- (15) To send and receive unopened correspondence in a prompt manner.
- (16) To receive or reject medical care or other services.
- (17) To receive assistance in exercising the right to vote.

Additionally, Proposed Section 87468.2 should be revised to include the following rights set forth in Health and Safety Code section 1569.269(b)-(e):

- (b) A licensed residential care facility for the elderly shall not discriminate against a person seeking admission or a resident based on sex, race, color, religion, national origin, marital status, registered domestic partner status, ancestry, actual or perceived sexual orientation, or actual or perceived gender identity.
- (c) No provision of a contract of admission, including all documents that a resident or his or her representative is required to sign as part of the contract for, or as a condition of, admission to a residential care facility for the elderly, shall require that a resident waive benefits or rights to which he or she is entitled under this chapter or provided by federal or other state law or regulation.
- (d) Residents' family members, friends, and representatives have the right to organize and participate in a family council that is established pursuant to Section 1569.158.
- (e) The rights specified in this section shall be in addition to any other rights provided by law.

Response:

The Department is instead setting the rights of residents in both privately and publicly operated facilities in the new Section 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities and the rights of residents in privately operated facilities in the new Section 87468.2, Personal Rights of Residents in Privately Operated Facilities. Proposed Section 87468.1(a)(4), (5), (6), (7), (8), (9), (10), (12), (13), (14), (15), (16), (17), as well as all of the other rights that continue to apply to both privately and publicly operated facilities are included in the new Section 87468.1. Proposed Section 87468.2 is amended to include provisions that apply to personal rights in privately operated facilities in Health and Safety Code section 1569.269(b), (c), (d), and (e), enacted by AB 2171 (Chapter 702, Statutes of 2014).

**6. Section 87468.2(a)**

Comment:

CANHR believes that additional explanation is necessary to provide clarity in understanding what a privately operated facility is as well as how it differs from a publicly operated facility. These terms are not self-evident. By adding the definition of "Privately Operated Facility" to the introductory paragraph, a layperson will not be required to go to another regulation to determine whether the rights in this section are applicable to the subject facility.

CANHR recommends that the subsection be amended as follows:

- (a) Residents in privately operated residential care facilities for the elderly shall have all of the following personal rights: "Privately Operated Facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.

Response:

The Department is making a similar modification to that requested by adding proposed definitions for both "privately operated facility" and "publicly operated facility" in Section 87468, Personal Rights of Residents for clarity purposes. Section 87468 serves as the lead section for subsequent sections that set forth the personal rights in privately and publicly operated facilities.

The Department is amending Section 87468(a), to read:

- (a) ~~Each resident~~ Residents in residential care facilities for the elderly shall have personal rights which include, but are not limited to, ~~the following:~~ those listed below in Sections 87468.1, Personal Rights of Residents in Privately and Publicly Operated Facilities, or and 87468.2, Personal

*Rights of Residents in Privately Operated Facilities, as applicable to the facility, and those listed in Section 87468.3, Personal Rights of Residents Who Are Lesbian, Gay, Bisexual, and Transgender.*

- (2) *"Privately operated facility" means a residential care facility for the elderly that is licensed to an individual, firm, partnership, association, or corporation.*
- (2) *"Publicly operated facility" means a residential care facility for the elderly that is licensed to a city, county, or other government entity.*

**7. Section 87468.2(a)(14)**

Comment:

CANHR believes that the language in the proposed section does not accurately reflect the statutory intent and meaning of the right as set forth in Health and Safety Code section 1569.269(a)(14). Section 1569.269(a)(14) requires that the admission agreement include **both** a comprehensive description for evaluation resident needs **and** the fee schedule, and positions the phrase "in the admission agreement" as set forth above in CANHR's comment. By moving the phrase "in the admission agreement" to the end of the first clause, it appears to modify only the fee schedule requirement and not both the evaluation method and fee schedule requirements. CANHR recommends that the phrase "in the admission agreement" be moved as indicated to clarify that both the evaluation method and the fee schedule must be included in the admission agreement.

CANHR recommends that the subsection be amended as follows:

- (14) To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services ~~provided in the admission agreement~~, and to receive written notice of any rate increases according to Health and Safety Code sections 1569.655 and 1569.884.

Response:

The Department is amending the proposed regulation to reflect the requested change. This change is consistent with the personal right of a resident "To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided, and to receive written notice of any rate increases pursuant to Sections 1569.655 and 1569.884" in Health and Safety Code section 1569.269(a)(14), enacted by AB 2171 (Chapter 702, Statutes of 2014).



The Department is amending Section 87468.2(a)(14), renumbered to Section 87468.2(a)(12), to read:

(12) *To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided in the admission agreement, and to receive written notice of any rate increases according to Health and Safety Code sections 1569.655 and 1569.884.*

**8. Section 87468.2(a)(22)**

Comment:

CANHR believes that the language in the proposed section does not accurately reflect the statutory intent and meaning of the right as set forth in Health and Safety Code section 1569.269(a)(22). Section 1569.269(a)(22) sets forth a resident's right to be protected from involuntary transfers, discharges and evictions, and uses the phrasing set forth in CANHR's comment above, i.e., "**shall not** involuntarily transfer or evict." The right is intended to prevent RCFEs from initiating illegal evictions; it is restrictive, not permissive. As currently phrased, the second sentence in Proposed Section 87468.2(a)(22) gives licensees the right to initiate legal evictions, rather than setting forth residents' right to remain in their home. CANHR recommends that the section be revised as set forth above for accuracy, clarity and consistency.

CANHR recommends that this subsection be amended as follows:

- (22) To be protected from involuntary transfers, discharges, and evictions. A licensee shall only not involuntarily transfer or evict residents for reasons other than those permitted by state law or regulations and shall comply with all eviction and relocation protections for residents. For purposes of this paragraph, "involuntary" means a transfer, discharge, or eviction that is initiated by the licensee, not by the resident.

Response:

The Department is amending the proposed regulation to reflect the requested change. This change is consistent with the personal right of a resident "To be protected from involuntary transfers, discharges, and evictions in violation of state laws and regulations. Facilities shall not involuntarily transfer or evict residents for grounds other than those specifically enumerated under state law or regulations, and shall comply with enumerated eviction and relocation protections for residents. For purposes of this paragraph, "involuntary" means a transfer, discharge, or eviction that is initiated by the licensee, not by the resident." in Health and Safety Code section 1569.269(a)(14), enacted by AB 2171 (Chapter 702, Statutes of 2014).

The Department is amending Section 87468.2(a)(22), renumbered to Section 87468.2(a)(20), to read:

*(2220) To be protected from involuntary transfers, discharges, and evictions. A licensee shall only not involuntarily transfer or evict residents for reasons other than those permitted by state law or regulations and shall comply with all eviction and relocation protections for residents. For purposes of this paragraph, "involuntary" means a transfer, discharge, or eviction that is initiated by the licensee, not by the resident.*

**9. Section 87468.2(a)(25)**

Comment:

CANHR recommends that the statutory reference be moved to the end of the sentence for clarity and ease of reading.

CANHR recommends that this subsection be amended as follows:

(25) To receive written information on the right to establish an advance health care directive, ~~and according to Health and Safety Code section 1569.156,~~ and the licensee's written policies on honoring an advance health care directive according to Health and Safety Code section 1569.156.

Response:

The Department is amending the proposed regulation to reflect the requested change for clarity purposes. This change is consistent with the requirements to receive written information on the right to establish an advance health care directive and the licensee's policies on honoring these directives as specified in Health and Safety Code section 1569.156. The change is also consistent with the personal right of a resident "To receive written information on the right to establish an advanced health care directive and, pursuant to Section 1569.156, the licensee's written policies on honoring those directives" in Health and Safety Code section 1569.269(a)(25), enacted by AB 2171 (Chapter 702, Statutes of 2014).

The Department is amending Section 87468.2(a)(25), renumbered to Section 87468.2(a)(22), to read:

*(2522) To receive written information on the right to establish an advance health care directive, ~~and according to Health and Safety Code section 1569.156,~~ and the licensee's written policies on honoring an advance health care directive according to Health and Safety Code section 1569.156.*